

## CHAPTER 365

## UNAUTHORIZED INSURERS

## H. F. 312

AN ACT relating to unauthorized insurers and persons doing an insurance business in Iowa.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Chapter five hundred seven A (507A), Code 1966, is  
2 hereby repealed.

1 SEC. 2. This chapter may be cited as the "Iowa Unauthorized In-  
2 surers Act".

1 SEC. 3. The purpose of this chapter is to subject certain persons  
2 and insurers to the jurisdiction of the insurance commissioner and the  
3 courts of this state in suits by or on behalf of the state and insureds  
4 or beneficiaries under insurance contracts. The general assembly here-  
5 by declares that it is a subject of concern that many residents of this  
6 state hold policies of insurance issued by persons and insurers not  
7 authorized to do insurance business in this state, thus presenting to  
8 such residents the often insuperable obstacle of asserting their legal  
9 rights under such policies in forums foreign to them under laws and  
10 rules of practice with which they are not familiar. The general as-  
11 sembly further declares that it is also concerned with the protection  
12 of residents of this state against acts by persons and insurers not  
13 authorized to do an insurance business in this state, by the mainte-  
14 nance of fair and honest insurance markets, by protecting the pre-  
15 mium tax revenues of this state, by protecting authorized persons and  
16 insurers which are subject to regulation from unfair competition by  
17 unauthorized persons and insurers, and by protecting against the eva-  
18 sion of the insurance regulatory laws of this state.

19 In furtherance of such state interest, the general assembly herein  
20 provides methods for substituted service of process upon such persons  
21 or insurers in any proceeding, suit or action in any court and substi-  
22 tute service of any notice, order, pleading or process upon such per-  
23 sons or insurers in any proceeding before the commissioner of insur-  
24 ance to enforce or effect full compliance with the insurance and tax  
25 laws of this state. In so doing, the state exercises its powers to pro-  
26 tect residents of this state and to define what constitutes doing an  
27 insurance business in this state, and also exercises powers and privi-  
28 leges available to this state by virtue of Public Law 79-15, 79th Con-  
29 gress of the United States, Chapter 20, 1st Sess., S. 340, 59 Stat. L.  
30 33; 15 U.S.C. 1011 to 1015 incl., as amended, which declares that the  
31 business of insurance and every person engaged therein shall be sub-  
32 ject to the laws of the several states.

1 SEC. 4. Unless otherwise indicated, the term "insurer" as used in  
2 this section includes all corporations, associations, partnerships and  
3 individuals engaged in the business of insurance. Any of the follow-  
4 ing acts in this state, effected by mail or otherwise, by an unauthorized  
5 foreign or alien insurer is defined to be doing an insurance business in  
6 this State.

- 7 1. The making of or proposing to make, as an insurer, an insurance  
8 contract.
- 9 2. The taking or receiving of any application for insurance.
- 10 3. The receiving or collection of any premiums, membership fees,  
11 assessments, dues or other considerations for any insurance.
- 12 4. The issuance or delivery of contracts of insurance to residents of  
13 this state or to corporations or persons authorized to do business in  
14 this state.
- 15 5. The doing of any kind of insurance business specifically recog-  
16 nized as constituting the doing of an insurance business within the  
17 meaning of the statutes relating to insurance.
- 18 6. The doing or proposing to do any insurance business in substance  
19 equivalent to any of the foregoing in a manner designed to evade the  
20 provisions of the insurance laws of this state.
- 21 7. Any other transactions of business relating directly to insurance  
22 in this state by an insurer.
- 23 The venue of an act committed by mail is at the point where the  
24 matter transmitted by mail is delivered and takes effect.

- 1 SEC. 5. The provisions of this Act shall not apply to:
  - 2 1. The lawful transaction of surplus lines insurance as permitted by  
3 sections five hundred fifteen point one hundred forty-seven (515.147)  
4 through five hundred fifteen point one hundred fifty (515.150) of the  
5 Code.
  - 6 2. The lawful transaction of reinsurance by insurers.
  - 7 3. Attorneys acting in the ordinary relation of attorney and client  
8 in the adjustment of claims or losses.
  - 9 4. Transactions in this state involving a policy lawfully solicited,  
10 written, and delivered outside of this state, covering subjects of insur-  
11 ance not resident located, or expressly to be performed in this state at  
12 the time of issue; and which transactions are subsequent to the issu-  
13 ance of the policy.
  - 14 5. Transactions in this state involving group or blanket insurance  
15 and group annuities where the master policy of such groups was law-  
16 fully issued and delivered in a state in which the company was author-  
17 ized to do an insurance business.
  - 18 6. Transactions in this state involving any policy of insurance is-  
19 sued prior to July 1, 1967.
  - 20 7. Any life insurance company organized and operated, without  
21 profit to any private shareholder or individual, exclusively for the  
22 purpose of aiding educational or scientific institutions organized and  
23 operated without profit to any private shareholder or individual by  
24 issuing insurance and annuity contracts direct from the home office of  
25 the company and without agents or representatives in this state only  
26 to or for the benefit of such institutions and to individuals engaged in  
27 the services of such institutions; nor shall this Act apply to any life,  
28 disability or annuity contracts issued by such life insurance company,  
29 provided such contracts otherwise comply with the statutes.
  - 30 8. Insurance on vessels, craft or hulls, cargoes, marine builder's  
31 risk, marine protection and indemnity or other risk including strikes  
32 and war risks commonly insured under ocean or wet marine forms of  
33 policy.

34 9. Transactions involving risks located in this state where the pol-  
35 icy or contract of insurance for such risk was principally negotiated  
36 and delivered outside this state and was lawfully issued in a state or  
37 foreign country in which the foreign or alien insurer was authorized  
38 to do an insurance business, and where such insurer has no contact  
39 with this state except in connection with inspections or losses required  
40 by virtue of the contract or policy of insurance covering the risk lo-  
41 cated in this state.

1 SEC. 6.

2 1. No person or insurer shall directly or indirectly perform any of  
3 the acts of doing an insurance business as defined in this Act except  
4 as provided by and in accordance with the specific authorization by  
5 statute. However, should any unauthorized person or insurer perform  
6 any act of doing an insurance business as set forth in this Act, it shall  
7 be equivalent to and shall constitute an irrevocable appointment by  
8 such person or insurer, binding upon him, his executor or adminis-  
9 trator, or successor in interest if a corporation, of the commissioner  
10 of insurance or his successor in office, to be the true and lawful attor-  
11 ney upon whom may be served all lawful process in any action, suit or  
12 proceeding in any court arising out of doing an insurance business in  
13 this state or instituted by or on behalf of an insured or beneficiary  
14 arising out of any such acts of doing an insurance business, except in  
15 an action, suit or proceeding by the commissioner of insurance or by  
16 the state. Any act of doing an insurance business by any unauthorized  
17 person or insurer shall be signification of its agreement that such  
18 service of process is of the same legal force and validity as personal  
19 service of process in this state upon such person or insurer.

20 2. Service of process shall be made by delivering to and leaving with  
21 the commissioner of insurance or some person in apparent charge of  
22 his office two (2) copies thereof and the payment to him of such fees  
23 as may be prescribed by law. The commissioner of insurance shall  
24 forthwith forward by certified mail one (1) of the copies of such  
25 process to the defendant at the last known principal place of business  
26 and shall keep a record of all process so served. Such service of pro-  
27 cess shall be sufficient to provide notice if:

28 a. A copy of the process is sent within ten (10) days thereafter by  
29 certified mail by plaintiff or plaintiff's attorney to the defendant at  
30 the last known principal place of business.

31 b. The defendant's receipt or receipt issued by the post office show-  
32 ing the name of the sender of the letter and the name and address of  
33 the person to whom the letter is addressed and an affidavit by the  
34 plaintiff or plaintiff's attorney showing a compliance herewith are  
35 filed with the clerk of the court in which such action is pending on or  
36 before the date the defendant is required to appear or within such  
37 further time as the court may allow.

38 3. Service of process in any such action, suit, or proceeding shall in  
39 addition to the manner as provided in this Act be valid if served upon  
40 any person within this state who, in this state on behalf of such in-  
41 surer, is soliciting insurance, making, issuing, or delivering any con-  
42 tract of insurance, or collecting or receiving any premium, member-  
43 ship fee, assessment, or other consideration for insurance, and if:

44     a. A copy of such process is sent within ten (10) days thereafter by  
45     certified mail by the plaintiff or plaintiff's attorney to the defendant  
46     at the last known principal place of business of the defendant.

47     b. The defendant's receipt, or the receipt issued by the post office  
48     showing the name of the sender of the letter and the name and address  
49     of the person to whom the letter is addressed, and an affidavit of the  
50     plaintiff or plaintiff's attorney showing a compliance herewith are  
51     filed with the clerk of the court in which such action is pending on or  
52     before the date the defendant is required to appear or within such  
53     further time as the court may allow.

54     4. No plaintiff shall be entitled to a judgment by default under this  
55     Act until the expiration of thirty (30) days from date of the filing of  
56     the affidavit of compliance.

57     5. Nothing in this section shall limit or abridge the right to serve  
58     any process, notice, or demand upon any insurer in any other manner  
59     now or hereafter permitted by law.

1     SEC. 7.

2     1. Any act of doing an insurance business as set forth in this Act  
3     by any unauthorized person or insurer is equivalent to and shall con-  
4     stitute an irrevocable appointment by such person and insurer, bind-  
5     ing upon him, his executor or administrator, or successor in interest  
6     if a corporation, of the secretary of state or his successor in office, to  
7     be the true and lawful attorney of such person or insurer upon whom  
8     may be served all legal process in any action, suit, or proceeding in  
9     any court by the commissioner of insurance or by the state and upon  
10    whom may be served any notice, order, pleading or process in any pro-  
11    ceeding before the commissioner of insurance and which arises out of  
12    doing an insurance business in this state by such person or insurer.  
13    Any act of doing an insurance business in this state by any unauthor-  
14    ized person or insurer shall be signification of its agreement that any  
15    such legal process in such court action, suit, or proceeding and any  
16    such notice, order, pleading, or process in such administrative proceed-  
17    ing before the commissioner of insurance so served shall be of the same  
18    legal force and validity as personal service of process in this state upon  
19    such person or insurer.

20    2. Service of process in such action shall be made by delivering to  
21    and leaving with the secretary of state or some person in apparent  
22    charge of his office, two (2) copies thereof. Service upon the secretary  
23    of state as such attorney shall be service upon the principal.

24    3. The secretary of state shall forthwith forward by certified mail  
25    one (1) of the copies of such process or such notice, order, pleading,  
26    or process in proceedings before the commissioner to the defendant in  
27    such court proceeding or to whom the notice, order, pleading, or process  
28    in such administrative proceeding is addressed or directed at the  
29    last known principal place of business and shall keep a record of all  
30    process so served on him which shall show the day and hour of serv-  
31    ice. Such service is sufficient, provided:

32    a. Notice of such service and a copy of the court process or the  
33    notice, order, pleading, or process in such administrative proceeding  
34    is sent within ten (10) days thereafter by certified mail by the plain-  
35    tiff or the plaintiff's attorney in the court proceeding or by the com-  
36    missioner of insurance in the administrative proceeding to the defend-

37 ant in the court proceeding or to whom the notice, order, pleading, or  
38 process in such administrative proceeding is addressed or directed at  
39 the last known principal place of business of the defendant in the  
40 court or administrative proceeding.

41 b. The defendant's receipt or receipts issued by the post office with  
42 which the letter is registered, showing the name of the sender of the  
43 letter and the name and address of the person or insurer to whom the  
44 letter is addressed, and an affidavit of the plaintiff or the plaintiff's  
45 attorney in court proceeding or of the commissioner of insurance in ad-  
46 ministrative proceeding, showing compliance therewith are filed with  
47 the clerk of the court in which such action, suit, or proceeding is pend-  
48 ing or with the commissioner in administrative proceedings, on or  
49 before the date the defendant in the court or administrative proceed-  
50 ing is required to appear or respond thereto, or within such further  
51 time as the court or commissioner of insurance may allow.

52 4. No plaintiff shall be entitled to a judgment or a determination  
53 by default in any court or administrative proceeding in which court  
54 process or notice, order, pleading, or process in proceedings before the  
55 commissioner of insurance is served under this section until the ex-  
56 piration of forty-five (45) days from the date of filing of the affidavit  
57 of compliance.

58 5. Nothing in this section shall limit or abridge the right to serve  
59 any process, notice, order, or demand upon any person or insurer in  
60 any other manner now or hereafter permitted by law.

61 6. The attorney general upon request of the commissioner may pro-  
62 ceed in the courts of this state or any other state or in any federal  
63 court or agency to enforce an order or decision in any court proceed-  
64 ing or in any administrative proceeding before the commissioner of  
65 insurance.

1 SEC. 8.

2 1. Before any unauthorized person or insurer files or causes to be  
3 filed any pleading or process in an administrative proceeding before  
4 the commissioner of insurance, instituted against such person or in-  
5 surer, by service made as provided in this Act, such person or insurer  
6 shall either:

7 a. Deposit with the clerk of the court in which such action, suit, or  
8 proceeding is pending, or with the commissioner of insurance in ad-  
9 ministrative proceedings before the commissioner, cash or securities,  
10 or file with such clerk or commissioner a bond with good and sufficient  
11 sureties, to be approved by the clerk or commissioner in an amount to  
12 be fixed by the court or commissioner sufficient to secure the payment  
13 of any final judgment which may be rendered in such action or ad-  
14 ministrative proceeding.

15 b. Procure a certificate of authority to transact the business of in-  
16 surance in this state.

17 2. The court in any action, suit, or proceeding in which service is  
18 made as provided in subsections two (2) and three (3) of section  
19 seven (7) of this Act, or the commissioner of insurance in any ad-  
20 ministrative proceeding before the commissioner in which service is  
21 made as provided in subsections two (2) and three (3) of section  
22 seven (7) of this Act, may in his discretion, order such postponement  
23 as may be necessary to afford the defendant reasonable opportunity to

24 comply with the provisions of subsection one (1) of this section and  
25 to defend such action.

26 3. Nothing in subsection one (1) of this section shall be construed  
27 to prevent an unauthorized person or foreign or alien insurer from fil-  
28 ing a motion to quash a writ or to set aside service thereof made in  
29 the manner provided in sections six (6) and seven (7) of this Act,  
30 on the ground that such unauthorized person or insurer has not done  
31 any of the acts enumerated in section four (4) of this Act.

32 4. In an action against an unauthorized person or insurer upon a  
33 contract of insurance issued or delivered in this state to a resident  
34 thereof or to a corporation authorized to do business therein, if the  
35 person or insurer has failed for thirty (30) days after demand prior  
36 to the commencement of the action to make payment in accordance  
37 with the terms of the contract, and it appears to the court that such  
38 refusal was without reasonable cause, the court may allow to the  
39 plaintiff a reasonable attorney fee and include such fee in any judg-  
40 ment that may be rendered in such action. Failure of the person or  
41 insurer to defend any such action shall be deemed prima facie evidence  
42 that its failure to make payment was without reasonable cause.

1 SEC. 9.

2 1. Whenever the commissioner of insurance has reason to believe  
3 that insurance has been effectuated by or for any person in this state  
4 with an unauthorized insurer the commissioner shall in writing order  
5 such person to produce for examination all insurance contracts and  
6 other documents evidencing insurance with both authorized and un-  
7 authorized insurers and to disclose to the commissioner the amount of  
8 insurance, name and address of each insurer, gross amount of premium  
9 paid or to be paid and the name and address of the person or persons  
10 assisting or aiding in the solicitation, negotiation, or effectuation of  
11 such insurance.

12 2. Every person investigating or adjusting any loss or claim on a  
13 subject of insurance in this state shall immediately report to the com-  
14 missioner every insurance policy or contract which has been entered  
15 into by any insurer not authorized to transact such insurance in this  
16 state.

17 3. Every person who, for thirty (30) days after receipt of written  
18 order pursuant to subsection one (1) of this section, neglects to com-  
19 ply with the requirements of such order or who willfully makes a dis-  
20 closure that is untrue, deceptive, or misleading shall forfeit fifty (50)  
21 dollars.

1 SEC. 10.

2 1. Effective with all premiums collected during the calendar year  
3 1967, except premiums on lawfully procured surplus lines insurance,  
4 every unauthorized insurer shall pay to the commissioner of insurance  
5 before March 1, next succeeding the calendar year in which the insur-  
6 ance was so effectuated, continued, or renewed a premium tax of two  
7 (2) percent of gross premiums charged for such insurance on subjects  
8 resident, located, or to be performed in this state. Such insurance  
9 whether procured through negotiation or an application, in whole or  
10 in part occurring or made within or outside of this state, or for which  
11 premiums in whole or in part are remitted directly or indirectly from

12 within or outside of this state, shall be deemed to be insurance pro-  
 13 cured or continued in this state. The term "premium" includes all  
 14 premiums, membership fees, assessments, dues, and any other consid-  
 15 eration for insurance. If the tax prescribed by this section is not paid  
 16 within the time stated, the tax shall be increased by a penalty of  
 17 twenty-five (25) percent and by the amount of an additional penalty  
 18 computed at the rate of one (1) percent per month or any part thereof  
 19 from the date such payment was due to the date paid.

20 2. If the policy covers risks or exposures only partly in the state,  
 21 the tax payable shall be computed on the portions of the premium  
 22 which are properly allocable to the risks or exposures located in the  
 23 state. In determining the amount of premiums taxable in this state,  
 24 all premiums written, procured, or received in this state and all pre-  
 25 miums on policies negotiated in this state shall be deemed written on  
 26 property or risks located or resident in this state, except such pre-  
 27 miums as are properly allocated or apportioned and reported as tax-  
 28 able premiums of any other state or states.

29 3. The attorney general, upon request of the commissioner of insur-  
 30 ance, shall proceed in the courts of this state or any other state or in  
 31 any federal court or agency to recover such tax not paid within the  
 32 time prescribed in this section.

1 SEC. 11. Any unauthorized foreign or alien insurer who does any  
 2 unauthorized act of an insurance business as set forth in this Act shall  
 3 be fined not more than five thousand (5,000) dollars. In addition to  
 4 any other penalty provided for in this Act or otherwise provided by  
 5 law, any person or insurer violating this Act shall forfeit to the state  
 6 the sum of five hundred (500) dollars for each offense and an addi-  
 7 tional sum of five hundred (500) dollars for each month during which  
 8 any such person or insurer continues such violation.

1 SEC. 12. If any provision of this Act or the application thereof to  
 2 any person or circumstances is held invalid, such invalidity shall not  
 3 affect other provisions or applications of the Act which can be given  
 4 effect without the invalid provision and to this end the provisions of  
 5 this Act are declared to be severable.

Approved June 30, 1967.

## CHAPTER 366

### LIFE INSURANCE INVESTMENTS

#### H. F. 345

AN ACT relating to the investment of funds of life insurance companies.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Section five hundred eleven point eight (511.8), Code  
 2 1966, is hereby amended as follows:

3 1. By striking from line nineteen (19) the words ", and no company  
 4 organized"; also by striking lines twenty (20) to twenty-two (22)  
 5 inclusive and inserting in lieu thereof a period.